SUPREME COURT OF THE UNITED STATES.

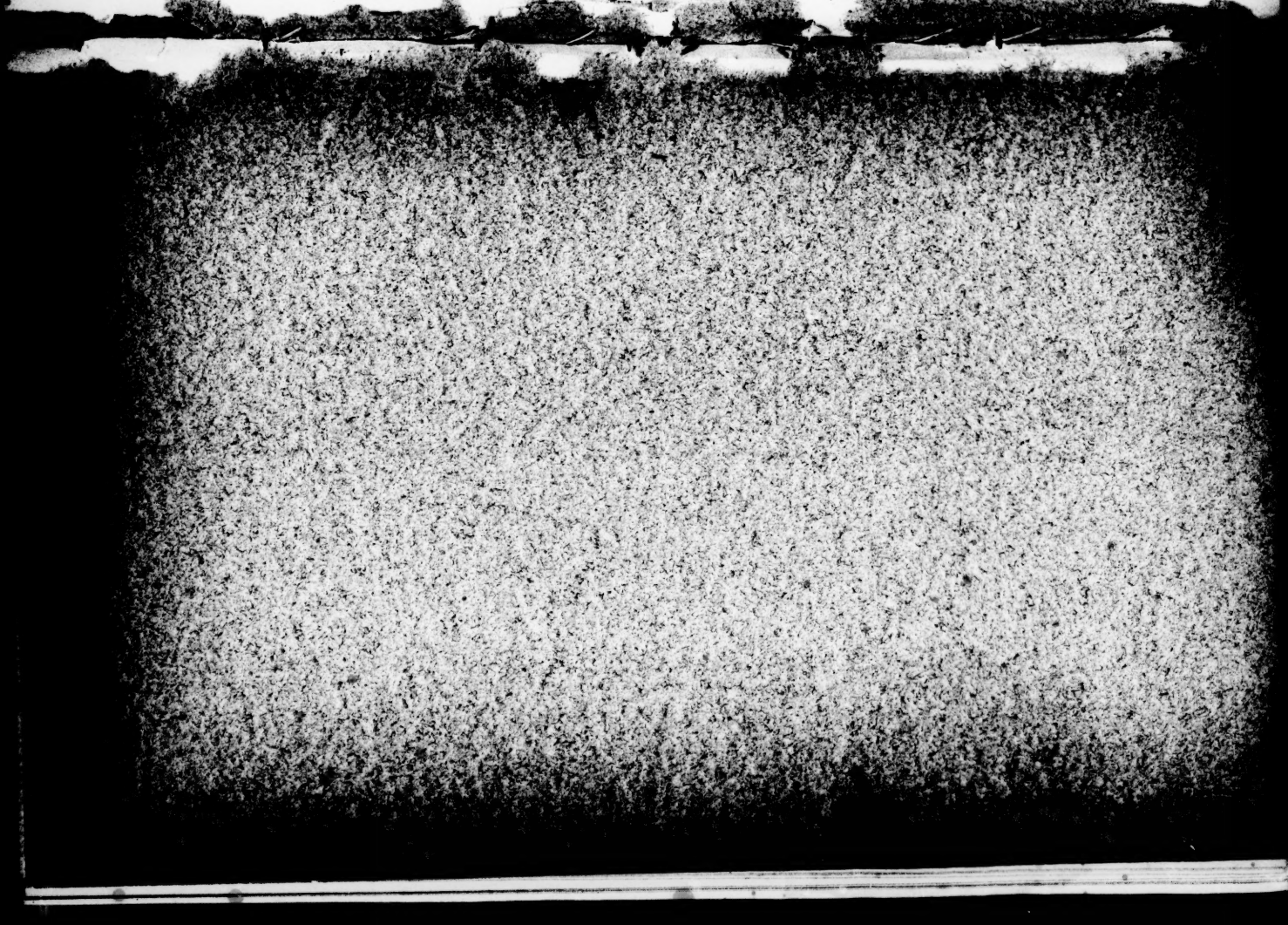
OCTOBER TERM, 1892.

No. 12, ORIGINAL.

EX PARTE: IN THE MATTER OF WILLIAM H. GAINES ET AL., PETITIONERS.

RETURN TO RULE.

FILED FEBRUARY 27, 1893.



UNITED STATES OF AMERICA:

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

To the honorable the Chief Justice and associate justices of the Supreme Court of the United States:

Answer of Henry C. Caldwell, judge of the eighth circuit, to the rule served upon him to show cause why a peremptory writ of mandamus should not issue to compel him to enter a certain proposed decree exhibited with the petition of William H. Gaines and others in the case of William H. Gaines and others *vs.* George C. Latta, pending in the circuit court of the United States for the eastern district of Arkansas, western division.

Respondent admits that the mandate set forth in the petition herein was filed in said circuit court at the time alleged therein; that the same was duly entered of record at the time alleged; that a petition was filed with said mandate, praying that the specific decree set forth in the exhibit accompanying the same be entered in favor of the petitioners; that the proposed decree is correctly set forth in the exhibit accompanying said petition; that a motion or petition was filed in said court at the time alleged praying for a writ of possession; that exceptions were filed to said proposed decree; that said exceptions are correctly set forth in the exhibit aforesaid, and that respondent sustained certain of said exceptions and refused to enter said proposed decree or award the writ of possession prayed for.

The proposed decree which respondent refused to enter is as follows, to wit:

"Now, on this day, came the plaintiffs, by U. M. and G. B. Rose, their solicitors, and, by leave of the court, having filed herein the mandate of the Supreme Court of the United States, wherefore it is now, on their motion, ordered, considered, and decreed by the court that all the right, title, claim, and interest of said defendant in and to lot 8, block 130, in the city of Hot Springs, be, and the same is, divested out of him, and that the same be vested in said plaintiffs, and that the account between said plaintiffs and defendant be stated in accordance with the directions contained in said mandate, and that in taking said account said defendant be charged with the rental value of said lot from the 23rd day of May, 1884, or during such portion of said time as they may have kept the plaintiffs out of possession thereof down to this date, with interest on the same from the end of each year at the rate of six per centum per annum; no additional rent, however, to be charged to said defendant by reason of any improvement placed thereon by said defendant, and that said plaintiffs be charged with all taxes paid by said defendants from the

23rd of May, 1884, with interest on the same from the time of such payment until this date, at the rate of six per centum; also with the present value of all improvements placed by defendants on said lot as the same may appear at this date; also the sum of $256.00 paid by said defendants to the United States for said lot, with interest on the same at the rate of six per centum per annum from January 1, 1882, until this date, and that said defendant pay all the costs by plaintiffs paid out and expended in this cause in this court, and that they have execution therefor as at law; and the special master herein is now directed to proceed to state an account between said parties according to the terms of this decree, and to that end he shall take testimony in writing of all witnesses produced, and shall report the same, with his proceedings and his findings herein, to this court at the next term thereof."

Among other exceptions to the proposed decree is the fifth, which is as follows:

"5. That one of the defences relied upon by the appellant in this cause at the hearing in which the former decree was rendered was that he was a purchaser for value from a person to whom the Hot Springs commission had awarded the lot in controversy without notice of the claim or contention of the appellees, and exhibited a quitclaim deed showing such conveyance and purchase in good faith and as evidence of his title; that this honorable court was of opinion, at the former hearing of this cause, that one holding under a quitclaim deed could not be regarded as a *bona fide* purchaser for value without notice, and that such a deed was not sufficient to put appellees to proof of notice; that one holding under a quitclaim deed could not avail himself of such a defense; that the Supreme Court of the United States, at the October term, 1891 (since the decision and ruling of this honorable court as aforesaid), has held in the case of McDonald *v.* Belding (145 U. S., 492) that the question of whether one was a *bona fide* purchaser for value without notice was one that was not to be determined by a mere inspection of the muniment of title, and that one could as well be a *bona fide* purchaser for value without notice, under a quitclaim deed, as one of warranty; that such a question was one to be settled by proof. Appellant states that there is no proof in the record showing that appellant had notice of the claim of appellees, and now denies, as is already denied by answer, that he had such notice, and submits that no decree ought to be rendered on the mandate herein in favor of the appellees, as to do so would not be according 'to right and justice and the laws of the United States' in the absence of proof that the appellees had such notice as is averred in the bill of complaint."

The bill alleges that Latta purchased, "well knowing before said transfer, all the terms and conditions of said lease, &c." This is denied by the answer, and it is averred as follows:

"That on the 1st of March, 1881, some time after said commissioners had awarded said tract of land to the said defendant Caver, one W. A. Moore and Geo. G. Latta, the defendant, bought said lot from the defendant Caver at the price of ($1,000) and said purchase was made without any knowledge whatever of any claim in plain-

tiffs or of the alleged lease or its terms; that they had never seen or heard of the contest before said commissioners or of the evidence taken in support of said claim, and that it was not accessible to them; that believing there was nothing, either in law or equity against it, they purchased the lot from said Caver and paid for it, &c."

Case No. 379, McDonald *v.* Belding, 145 U. S., 492, and cases No. 227, Goode *v.* Gaines; No. 302, Smith *v.* Gaines; No. 303, Dugan *v.* Gaines; No. 304, Cohen *v.* Gaines; No. 305, Allen *v.* Gaines; No. 306, Madison *v.* Gaines; No. 307, Rugg *v.* Gaines; No. 308, Garnett *v.* Gaines; No. 309, Garnett *v.* Gaines; No. 310, Rugg *v.* Gaines; No. 311, Granger *v.* Gaines; No. 312, Neubert *v.* Gaines; No. 313, Sumpter *v.* Gaines; No. 314, Latta *v.* Gaines, and No. 315, Latta *v.* Gaines, were all cases growing out of what is known as the Hot Springs reservation litigation. There were some questions common to all the cases. The question as to whether the action of the Hot Springs commissioners was final (Rector *v.* Gibbons, 111 U. S., 276) was common to all of them. The question as to the rights of those parties who had purchased and paid value without notice of any defect in the title, but who accepted quitclaim deeds from their grantors, was not common to all the cases, but was raised in several of the cases upon pleadings and proofs identical in substance and legal effect. Among the cases in which that question was raised upon substantially the same pleadings and proofs was case No. 379, McDonald *v.* Belding, and case No. —, Latta *v.* Gaines, and case No. —, Rugg *v.* Gaines. In the circuit court, most, if not all, of these cases were tried at the same time and treated very much as one case. On appeal in this honorable court it appears that the cases were all submitted and heard together with the exception of case No. 379, McDonald *v.* Belding, which was argued, submitted, and decided by itself. Why this case was separated from the others in the argument and submission in this honorable court respondent is not advised. It appears from the report (145 U. S., 141) that cases numbered 227, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, and 315 were argued April 18, 1892, and decided May 2nd, 1892, and that case No. 379, McDonald *v.* Belding, was submitted April 26th, 1892, and decided May 16th, 1892. In the case of McDonald *v.* Belding this honorable court said: "Under all the circumstances it cannot be held that McDonald, although taking a quitclaim deed, was chargeable, when he purchased, with notice of any existing claim to the property upon the part of the plaintiffs or of either of them," and reversed the decree of the circuit court and remanded the cause with directions to the circuit court to dismiss the bill. The same pleadings, the same proofs, and the same "circumstances" in substance and legal effect are present in the case of Latta *v.* Gaines and others and Rugg *v.* Gaines and others. On this point the pleadings and proofs in the last two cases may fairly be said to be identical with the pleadings and proofs in the case of McDonald *v.* Belding.

The contention of the petitioners is that while the mandate of this honorable court apparently reverses the decree of the circuit

court that this honorable court did not intend so to do, but only intended to reverse so much of said decree as related to the mode of stating the account of rents and profits between the parties. Such an intention could have been made perfectly clear by affirming so much of the decree as vested title in the petitioners and directing how the account should be stated. Instead of doing that it reversed both the interlocutory and final decrees and remanded the cause to be proceeded in accordance to law and justice and the laws of the United States, in conformity to the opinion of this honorable court.

If the Supreme Court has not in fact reversed that portion of the decree of the circuit court which vested title in the petitioners, then there is no necessity for entering any portion of the proposed decree save that which directs the manner of stating the account. If it has reversed that portion of the decree vesting title in the petitioners and remanded the cause to be proceeded in in accordance with the opinion of this honorable court, the determination of what the opinion directs calls for the exercise of judicial functions and discretion and it is submitted that such discretion cannot be controlled by mandamus.

In the McDonald-Belding case it appears that one Flynn leased a lot in the Hot Springs reservation from Belding and made some improvements thereon; that after the appointment of the Hot Springs commission, Flynn, on the ground that he had made the improvements on the lot, made claim to it, and Belding claimed that he was entitled to it by reason of previous occupation and possession, and that he held continuous possession through Flynn, his tenant. The commission awarded the lot to Flynn, who afterwards and before the commencement of suit by Belding sold and conveyed the same to McDonald by a quitclaim deed. After the sale to McDonald Belding commenced suit against both of them, seeking to charge them as trustees and to compel them to convey to him, alleging that McDonald purchased with full knowledge of his (Belding's) equities. McDonald denied notice of the alleged equities of Belding and claimed to be an innocent purchaser for value. The circuit court held that one holding under a quitclaim deed could not be regarded as an innocent purchaser for value, and rendered a decree in favor of Belding. This honorable court, on appeal, held that McDonald, under the quitclaim deed, could be and was an innocent purchaser for value, and reversed the decree of the circuit court and directed that the bill should be dismissed.

In view of the uniform character of the Hot Springs litigation and the customary mode and manner of hearing and deciding what are known as the Hot Springs cases, respondent believes that the circuit court, in the disposition of said cases reversed by this honorable court and remanded to the circuit court with instructions to proceed therein "according to right and justice and the laws of the United States," should give effect to the several decisions of this honorable court in the Hot Springs cases, and that where the pleadings and proofs are identical with the pleadings and proofs in McDonald *v.* Belding that the circuit court should apply the doc-

trine of that case, and that the opinion in that case should be read into and treated as if it were a part of the opinion in the consolidated case reported under the title of Goode *v.* Gaines, in such of the cases embraced therein as are on all fours with the case of McDonald *v.* Belding.

Respondent respectfully submits to the judgment of this honorable court and will enter and enforce by proper decree any order or decree made by this honorable court in and about the matters complained of; and respondent respectfully refers to the brief of the counsel for George G. Latta and D. C. Rugg, which will be filed in this cause, and the authorities therein referred to to show why a peremptory writ should not issue.

HENRY C. CALDWELL,
United States Circuit Judge, Eighth Circuit.